IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.529 OF 2004

Ramkrishna Vithal Karnataki & Ors ...Appellants

Vs.

Shridhar Ganesh Mudalgikar & Ors. ...Respondents

WITH
SECOND APPEAL NO.564 OF 2004

Umesh Nirmalnath Vankudre ...Appellant

Vs.

Shridhar Ganesh Mudalgikar & Ors. ...Respondents

Mr.A.A.Kumbhakoni for the Appellants
Mr.D.N.Hungund for the Respondent No.1.

CORAM: A.S.OKA, J.
DATED: FEBRUARY 3,2005.

P.C.:

1. Both the Second Appeals are heard together as the challenge in both the Appeals is to the same impugned Judgments and Decrees. The Second Appeals arise out of a dispute between a tenant of a residential premises on one hand and the landlords and builders appointed by them on the other hand. The Tenant vacated the tenanted premises to facilitate development of the property. He has been denied by the Landlords permanent accommodation in the developed property.

2. For the sake of convenience, the parties are referred to with reference to their status in the Special Civil Suit No.204 of 1991. The Second Appeal No.529 of 2004 is filed by

the original Defendant Nos.1,2 and 4. The Second Appeal No.564 of 2004 is filed by the original Defendant No.6. The original Plaintiff is the Respondent No.1 in both the Second Appeals. Original Defendant Nos.1 to 3 are the owners of the property known as "Karnataki Wada". The Plaintiff was a tenant in respect of a residential premises in the said "Karnataki Wada". The Defendant Nos.1 to 3 filed a suit being Regular Civil Suit No.888 of 1984 against the Plaintiff for possession of the tenanted premises. In the said suit a compromise was arrived at between the parties. In the said compromise decree it was agreed that the Plaintiff will surrender the possession of the tenanted premises and in return the Defendant Nos.1 to 3 agreed to sell Flat No.B-6 in the proposed new building (now known as Raghavendra Chamber) to the Plaintiff for consideration of Rs.1,24,000/-. The possession of the suit flat No.B-6 was agreed to be delivered to the Plaintiff by the end of March 1988. Out of total consideration, the Plaintiff paid a sum of Rs.5,000/- on 12th May 1987. As per the compromise, the balance consideration was to be paid at the time of execution of the sale deed. An agreement was entered into between the parties on 12th May 1987 for the sale of the suit flat No.B-6 (for short the said flat). The Plaintiff issued a notice dated 5th May 1988 to the Defendant No.1 to 3 stating therein that he was ready and willing to pay the balance price and called upon the Defendant Nos.1 to 3 to perform their part of the contract. By a reply, the Defendants No.1 to 3 contended that the

agreement stands cancelled. It is to be noted here that by way of temporary arrangement the Plaintiff was put in possession of flat No.C-3 and was permitted to occupy the said flat till the suit flat was handed over in possession of the Plaintiff.

3. It is the case of the Defendant No.5 that on 28th February 1989 an agreement was executed in his favour by Defendant Nos.1 to 4 by which he was put in possession of the suit flat. The Defendant No.6 claimed that the Defendant Nos.1 to 4 sold the suit flat in his favour with the consent of Defendant No.5 on 21st August 1991.

4. The Plaintiff filed Regular Darkhast No.118 of 1989 for execution of the consent decree passed in the suit for eviction in i.e.Regular Civil Suit No.888 of 1984. Special Civil Suit No.204 of 1991 was filed by the Plaintiff for specific performance of the agreement dated 12th May 1987. Regular Civil Suit No.794 of 1991 was filed by the Defendant Nos.1 to 3 for declaration that the compromise decree in R.C.S.No.888 of 1984 is illegal, null and void and not executable. All the three proceedings were heard together by the Trial Court. The learned Trial Judge held that in view of the suit for specific performance filed by the Plaintiff, Regular Darkhast was not maintainable. The learned Trial Judge therefore dismissed the said Regular Darkhast. The R.C.S.No.794 of 1991 filed by the Defendant Nos.1 to 3 was

dismissed on various grounds. Special Civil Suit No.204 of 1991 was partly decreed by directing the Plaintiff to pay to Defendant Nos.1 to 4 balance consideration in respect of the suit flat within one month and by directing the Defendant Nos.1 to 4 to execute the sale deed in respect of the suit flat within one month and put the Plaintiff in possession of the suit flat. The Plaintiff was directed to hand over the possession of flat No.C-3 within two days after getting the possession of the suit flat. The Plaintiff was awarded a compensation of Rs.25,000/-.

5. There were two Appeals preferred to the District Court. One Appeal was preferred by the Defendant No.6 and other was by Defendant Nos.1 to 4. By a common Judgment both the Appeals have been dismissed.

6. Being aggrieved by the Judgments and Decrees passed by the Courts below, present Second Appeals are filed. By order dated 15th December 2004 this Court directed that both the Appeals will be heard finally.

7. Shri Kumbhakoni, learned Counsel appearing for the Appellants submitted that the suit for specific performance was not maintainable as it was hit by Section 47 of the Code of Civil Procedure, 1908. He submitted that the agreement dated 12th May 1987 and the compromise decree were not at all independent. He submitted that the area of the suit flat has

been increased by 10 sq.ft. apart from other structural changes made therein. The learned Counsel appearing for Respondent No.1 has supported the impugned Judgments and Decrees and he has taken me through the various findings recorded by the Courts below.

8. The Appellate Court has held that there was a reference in the compromise decree to the agreement for sale of the suit flat between the parties. It is, however, not stated that the agreement will form part of the decree. The compromise provided that criminal case filed by the Plaintiff against the Defendant Nos.1 to 3 shall be withdrawn. After perusing the consent terms and the suit agreement, the Appellate Court has come to the conclusion that the consent terms and the agreement are independent and the Plaintiff has derived independent rights on the basis of the agreement.

9. The learned Trial Judge dismissed the Regular Darkhast on technical ground that the decree passed by compromise was not registered and was not executable.

Under the suit agreement the Plaintiff was put in possession of temporary accommodation and it was provided that the suit flat will be sold to him.

11. The other dispute was regarding extra amount allegedly payable by the Plaintiff on account of additional amenities

provided in the suit flat. The Appellate Court has referred to the pleadings and evidence on record. The Appellate Court after considering the oral and documentary evidence on record and in particular receipts which are exhibited regarding purchase of paint, sanitary ware etc.recorded a finding that the Plaintiff has purchased the material used for additional facilities. Even the contractor who carried out the construction of the building admitted that the Plaintiff has provided requisite material for the additional work. The Appellate Court found that no evidence was led to show that the area of the suit flat was increased.

12. In so far as Defendant No.6 is concerned, it is not established that he was a bonafide purchaser without the knowledge of the suit Agreement and therefore, the fact that he is claiming through Defendant Nos.1 to 4 is an admitted position.

13. The findings of both the Courts below is that the Plaintiff has shown readiness and willingness to pay the balance amount. In fact as per the decree passed by the Trial Court, the Plaintiff has deposited the entire amount in the Trial Court. It is to be borne in mind that the Plaintiff was admittedly a tenant in the old building and he agreed to vacate the tenanted premises to enable the owners to develope the property and the Plaintiff is denied the accommodation in the developed property.

14. Considering all these aspects, the Courts below have exercised discretion and passed a decree for specific performance. I find no perversity in the findings of the Courts below. Once it is held that the Plaintiff is entitled to decree for specific performance on the basis of the suit agreement, the Defendant Nos.1 to 3 cannot succeed in the suit filed by them.

15. No substantial question of law arises in both the Appeals and the same are dismissed with no order as to costs.

Judge.